

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

*In re:*  
Veterans Government Contract  
Consulting  
1300 Pennsylvania Avenue, NW  
Washington, DC 20004  
Plaintiff

v.

Department of Veteran Affairs  
Center for Veterans Enterprises  
810 Vermont Avenue, NW  
Mail Code (00)  
Washington, D.C. 20420

And

Eric Shinseki, In his Official Capacity  
As Executive Director, Small and  
Veteran Business Programs  
810 Vermont Avenue, NW  
Mail Code (00)  
Washington, D.C. 20420

And

Thomas J. Leney, In his Official Capacity  
As Executive Director, Small and Veteran  
Business Programs  
810 Vermont Avenue, NW  
Mail Code (00)  
Washington, D.C. 20420  
Defendant(s)

Civil Action:

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**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§701 et seq., for injunctive and other appropriate relief, and seeking the release of agency records requested by Plaintiff from Defendant, Department of Veteran Affairs, Center for Veterans Enterprise.

**JURISDICTION AND VENUE**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§552(a)(4)(B) and 552(a)(6)(E)(iii). This court also has jurisdiction over this action pursuant to 28 U.S.C. §1331 and 5 U.S.C. §§701-706. Venue lies in this District under 5 U.S.C. §552(a)(4)(B).

**PARTIES**

3. Plaintiff, Veterans Government Contract Consultants ("VETGCC") is a

limited liability corporation incorporated in Washington, DC. VETGCC's activities include working with companies seeking assistance navigating the Center for Veterans Enterprises' verification program.

4. Defendant, United States Department of Veteran Affairs ("the VA") is a Department of the Executive Branch of the United States Government. The VA is an agency within the meaning of 5 U.S.C. §552(f). The VA has created the Center for Veterans Enterprise (CVE), which is solely dedicated to assisting veterans in starting and building businesses. Defendants, CVE maintain a web site that serves as the federal government portal for veteran-owned businesses known as WWW.VIP.VETBIZ.GOV.

5. Defendant, Eric Shinseki is Secretary of Veteran Affairs and heads the Department of Veteran Affairs. Defendant Shinseki is responsible for the VA compliance with the laws of the United States and regulations promulgated thereunder, including the laws and regulations at issue in this case.

6. Defendant, Thomas J. Leney, is the Executive Director of the Center for Veterans Enterprises. Defendant Leney is responsible for CVE's day-to-day operations.

#### **THE CENTER FOR VETERANS ENTERPRISE**

7. On October 20, 2004, President George Bush, Jr., signed Executive Order 13360, calling for an increase in federal contracting and subcontracting opportunities for service-disabled veteran owned businesses. On December 12, 2004, the Executive Office of the President issued a memorandum to all Federal agencies on the implementation of Executive Order 13360. This memorandum provides guidance to assist agencies in preparing their strategies to implement Executive Order 13360. Among other things, Executive Order 13360 requires each agency to: (1) provide a strategic plan on how they will meet the 3% goal for Service-Disabled Veteran Owned Small Business (SDVOSB); (2) designate a senior-level official to be responsible for developing and implementing the agency's strategy; and (3) report its progress annually to the Small Business Administration (SBA).

8. Public Law 109-461 authorizes a unique "Veterans First" approach specific to the VA's contracting practices. Public Law 109-461 redefines priorities for contracting preferences within the VA, placing Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) first and second, respectively, in satisfying the VA's acquisition requirements.

9. Businesses seeking VA contracts set aside exclusively for service-disabled Veteran and Veteran owned small businesses must meet certain criteria specified in 38 CFR 74 and be registered with CVE. CVE maintains all collected information of the registered business in the Vendor Information Pages (VIP) database.

10. Registered businesses, or businesses wishing to register in the Vendor

Information Pages (VIP) database for the purpose of securing opportunities in the Veterans First Contracting Program, must register with CVE by filling out an electronic Verification application (the VA Form 0877) located at [www.vip.VetBiz.gov](http://www.vip.VetBiz.gov).

11. As part of the Vendor Information Pages (VIP) database, CVE requires all applicants and registrants to provide, among other things, the following information: (1) First Name of Veteran; (2) Last Name of Veteran; (3) Name of Company; (4) DUNS Number; (5) Email Address; (6) Telephone Number; (7) Address; (8) City; (9) State ; (10) Zip Code; (11) VOSB; (12) SDVOSB; (13) Annual Revenues; (14) Largest Contract Completed; (15) Bonding Level; (16) Number of Employees; (17) Number of Locations; and (18) Year Established.

12. CVE requires its applicants to register with several other government databases, including ORCA & CCR. Each of these databases is open to the public and also contains the information maintained by CVE, as described in paragraph 11.

13. After a vigorous verification process, applicant businesses are either approved or denied. Those business that are approved are made visible on the Vendor Information Pages (VIP) database and are eligible for VA contracts set aside exclusively for service-disabled Veteran and Veteran owned small businesses. Denied business are not made visible on the Vendor Information Pages (VIP) database and are consequently ineligible for VA contracts set aside exclusively for service-disabled Veteran and Veteran owned small businesses.

#### **FACTS**

14. By letter to Defendant, CVE dated November 29, 2011, Plaintiff requested under the FOIA *"For each Veteran Owned Small Business, Service Disabled Veteran Owned Small Business, or Joint Venture that CVE approved for inclusion in the VetBiz Vendor Information Pages (VIP) Verification Program and is therefore visible to the public in VIP, **as of the date your agency responds to this FOIA Request**, please provide the following information for each company or legal entity: (1) First Name of Veteran; (2) Last Name of Veteran; (3) Name of Company; (4) DUNS Number; (5) Email Address; (6) Telephone Number; (7) Address; (8) City; (9) State ; (10) Zip Code; (11) VOSB; (12) SDVOSB; (13) Annual Revenues; (14) Largest Contract Completed; (15) Bonding Level; (16) Number of Employees; (17) Number of Locations; and (18) Year Established."* **See Exhibit 1.**

15. In the November 29, 2011 letter, Plaintiff also requested under the FOIA that *"For each Veteran Owned Small Business, Service Disabled Veteran Owned Small Business, or Joint Venture that CVE has not been approved for inclusion in the VetBiz Vendor Information Pages (VIP) Verification Program and is therefore not visible to the public in VIP, **as of the date your agency responds to this FOIA Request**, please provide the following information for each company or legal entity: (1) First Name of Veteran; (2) Last Name of Veteran; (3) Name of Company; (4) DUNS Number; (5) Email Address; (6) Telephone Number; (7) Address; (8) City; (9) State ; (10) Zip Code; (11) VOSB; (12) SDVOSB; (13)*

*Annual Revenues; (14) Largest Contract Completed; (15) Bonding Level; (16) Number of Employees; (17) Number of Locations; and (18) Year Established."*

16. CVE received this request on November 29, 2011 and assigned it FOIA Tracking Number: 12-01686-F.

17. The Freedom of Information Act specifies that CVE had twenty (20) working days, excluding Saturdays, Sundays, and federal holidays after receipt of the FOIA request to issue a determination. The 20 working day period began on November 29, 2011, the date an office authorized by the VA to process FOIA requests received the Plaintiff's FOIA request.

18. To date, nearly over a hundred days after CVE's deadline to issue a determination, CVE has not responded to Plaintiff's FOIA request, despite numerous telephone calls, emails, and facsimiles.

19. CVE maintains the information sought by the Plaintiff under FOIA in the ordinary course of its business.

20. Defendants have wrongfully withheld the requested records from Plaintiff.

#### **CAUSES OF ACTION**

##### **FIRST CAUSE OF ACTION:**

##### **VIOLATION OF THE FREEDOM OF INFORMATION ACT FOR FAILURE TO TIMELY RESPOND TO PLAINTIFF'S FOIA REQUESTS**

21. Plaintiff repeats and re-alleges paragraphs 1-20.

22. Defendants' failure to timely respond to Plaintiff's requests for expedited processing violates the FOIA, 5 U.S.C. §552(a)(6)(E)(ii).

##### **SECOND CAUSE OF ACTION:**

##### **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT FOR FAILURE TO TIMELY RESPOND TO PLAINTIFF'S FOIA REQUESTS**

23. Plaintiff repeats and re-alleges paragraphs 1-22.

24. Defendants' failure to timely respond to Plaintiff's FOIA request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA. Defendants' failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

##### **THIRD CAUSE OF ACTION:**

##### **VIOLATION OF THE FREEDOM OF INFORMATION ACT FOR FAILURE TO GRANT PLAINTIFF'S FOIA REQUESTS**

25. Plaintiff repeats and re-alleges paragraphs 1-24.

26. Defendants' failure to grant Plaintiff's requests for expedited processing

violates the FOIA, 5 U.S.C. §552(a)(6) (E)(i), and Defendant the VA's own regulation promulgated thereunder, 49 CFR 731(c).

**FOURTH CAUSE OF ACTION:**  
**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT FOR**  
**FAILURE TO GRANT PLAINTIFF'S FOIA REQUESTS**

27. Plaintiff repeats and re-alleges paragraphs 1-26.

28. Defendants' failure to grant Plaintiff's requests for expedited processing is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

**REQUESTED RELIEF**

WHEREFORE, Plaintiff prays that this Court:

- A. Order Defendants to immediately process the requested records in their entireties;
- B. Order Defendants to disclose the requested records in their entireties and make copies available to Plaintiff;
- C. Expedite this proceeding as provided for in 28 U.S.C. 1657;
- D. Order Defendants, upon completion of such processing, to timely respond to all of Plaintiff's future Freedom of Information Act Request;
- E. Award plaintiff costs and reasonable attorney's fees in this action, as provided in 5 U.S.C. 552(a)(4)(E); and
- F. Grant such other relief as the Court may deem just and proper.

May 21, 2012

Respectfully submitted,

/s/ Rowena N. Nelson  
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